IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.7639 OF 2006.

Balasaheb Anantrao Bahirat,
age 61 years, Occu:Business,
R/at : Bahirat Bee Biyane
["Matrusmruti"] Near Gadital,
Hadapsar, Pune 411 028. ..Petitioner.

Versus.

Rohidas Bapusaheb Tupe,
age 58 years, Occup.Agri,
R/o at Tupe Niwas, Malwadi,
Hadapsar, Pune-411 028.
At present residing at
Sadhana Society,behind
Ravidarshan Pune-Sholapur
road Gadital
Hadapsar Pune 411 028. ..Respondent.

WITH

WRIT PETITION No.7640 OF 2006.

Balasaheb Anantrao Bahirat,
age 61 years, Occu:Business,
R/at : Bahirat Bee Biyane
["Matrusmruti"] Near Gadital,
Hadapsar, Pune 411 028. ..Petitioner.

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Mr. S. J. Rairkar Advocate i/b Advocate S.J. Walimbe for the Petitioner.

Mr. Mukund T. Pise, Advocate for the Respondent.

CORAM:R.M.S.KHANDEPARKAR,J.

DATED:18TH DECEMBER, 2006.

ORAL JUDGMENT

1. Heard.

2. Rule. By consent, the Rule is made returnable forthwith.

3. Since common question of law and facts arises in both the petitions and it pertain to the same premises, they were heard together and are being disposed of by this common judgment.

4. The petitioner challenges the judgment and decree of eviction passed against the petitioner by the trial Court and confirmed by the lower appellate Court as well as the order of fixation of standard rent passed by the Trial Court and up-held by the lower Appellate Court. The eviction has been ordered on two grounds. Firstly on account of default in

payment of rent and secondly on the ground of bonafide need of the premises to the land-lord.

5. The challenge to the decree of eviction is two fold. Firstly that the proceedings initiated by the respondent land-lord were admittedly under old Rent Act namely The Bombay Rent, Hotel and Lodging Rates Control Act, 1947, however, the same were initiated after the commencement of the Maharashtra Rent Control Act, 1999 (new Rent Act) and, therefore, the proceedings for eviction were not maintainable ab-initio. Reliance is sought to be placed in the decision of the learned Single Judge in Pacific Engineering Company Pvt. Ltd. Vs. East Hotels Limited in 2005(1) Bombay C.R. 427 in support of the said contention. The second ground of challenge is that the Lower Appellate Court while confirming the decree for eviction failed to take into consideration the additional evidence which was produced by the petitioner pursuant to the leave granted during the pendency of the Appeal.

6. As regards the order regarding fixation

of standard rent, the challenge is confined to the rejection of the appeal by the lower Appellate Court in that regard by referring to the provisions of Section 15 (3) of the Maharashtra Rent Control Act inasmuch as that since the proceedings themselves were initiated under the old Rent Act, the appeal could not have been rejected by referring to the provisions of new Rent Act. Attention was also sought to be drawn to Section 58(2) of New Rent Act while canvassing the contention about non-maintainability of the proceedings. It is the contention on behalf of the petitioner that since the old Rent Act was already repealed, no proceedings could have been initiated thereunder.

7. It is not in dispute that the proceedings for eviction were filed on two grounds, namely, default in payment of rent and bonafide need of the suit premises for personal occupation of the land-lord. It is not in dispute, nor can be disputed that both these grounds were available for eviction of the tenant under the old Rent Act and are also available under the new Rent Act. It is also

matter of record that during the pendency of the proceedings and nearly three years after instituting the proceedings, the respondent herein moved an application for amendment seeking deletion to the pleadings which refer to the provisions of the old Rent Act and in place of those pleadings by referring to the provisions of new Rent Act and the said amendment was allowed by the Trial Court.

8. Section 58(1) of the New Rent Act provides that on commencement of the new Rent Act, old Rent Act shall stand repealed. The new Rent Act came into force with effect from 31st March, 2000. Consequently, old Rent Act stood repealed from the said day in terms of the provisions comprised under Section 58(1) of the New Rent Act. Sub Section (2) Clause (a) of Section 58 provides that notwithstanding such repeal, all applications, suits or other proceedings which were instituted under the old Rent Act and were pending on the date of the commencement of the new Rent Act, shall be continued and disposed of in accordance with the provisions of the old Rent Act, as if old Rent Act had continued in force and the new Rent Act had not been

passed. Obviously, the provisions of Section 58 (2) (a) of the new Rent Act would apply to those proceedings which were pending on 31st March, 2000. Undoubtedly, the provisions of Section 58 (2) (a) of the New Rent Act would apply to the proceedings for eviction of a tenant of a building instituted on or after 31st March, 2000 as in terms of Section 58 (1) of the new Rent Act. The provisions of new Rent Act would apply to all such proceedings.

9. It is,however, sought to be contended on behalf of the petitioner that there was a clear admission on the part of the respondent that the proceedings though were initiated after 31st March, 2000, they were initiated under the old Rent Act, and, therefore, the proceedings should be considered as not maintainable and should be dismissed accordingly. Indeed, it cannot be disputed that when the claim or application for eviction was filed by the respondent, it did disclose the same was filed in terms of provisions of old Rent Act. But at the same time, it is well settled law that the jurisdiction of the Court depend upon the facts pleaded in the application and not on

the basis of the provisions of law cited by the party in the application. If the facts disclosed in the plaint or the application for eviction of a tenant sufficiently make out a case which could fall within the parameters of provisions of law under the new Rent Act, merely because the respondent had referred to the provisions of the old Rent Act, the proceedings can be held to be bad in law or not maintainable. Once it was clear that the proceedings were initiated on or after 31st March, 2000, and it was relating to the subject of eviction of tenant from a building, it could not have been tried as one under the old Rent Act which was already repealed on 31st March, 2000 and was replaced by the new Rent Act. On the contrary, irrespective of the provisions of law under the old Rent Act having been referred to in such application or plaint, the court will have to consider the same in terms of the provisions of the new Rent Act. Of course, if the facts are not sufficient to disclose cause of action for initiating proceedings in terms of the provisions of new Rent Act the same could be rejected. The jurisdiction of the Court does not depend upon the consent or the concession

made by the party in relation thereto. It depends upon the statutory provisions which give jurisdiction to a court to entertain the particular application or the proceedings. Once the pleadings in the application filed by the respondent disclosed necessary facts which revealed the cause of action in terms of the provisions of the new Rent Act, nothing prevented the Small Causes Court, which is the court duly empowered to entertain the applications for eviction under the new Rent Act, to entertain the application filed by the respondent irrespective of the fact that the application referred to the provisions of the old Rent Act.

10. The decision of the learned Single Judge in Pacific Engineering Co. Pvt. Ltd. (supra) has absolutely no application to the case in hand. The said decision was delivered in the case where the proceedings were undisputedly initiated prior to 31st March, 2000. The contents of para no. 5 of the said decision clearly disclose that the suit was initially filed on 4th March, 1999 i.e. much prior to the enforcement of the new Rent Act and when the old Rent Act was in force.

Obviously, therefore, the learned Single Judge had observed that -

> "While exercising jurisdiction under Section 28 of the Bombay Rent Control Act, the Small Causes Court functions as a special Court under that Act and does not exercise its ordinary civil jurisdiction under the Presidency Small Causes Court, 1882".

11. The said ruling therefore, is of no help to the petitioners in the matter in hand. Besides merely because the respondent had made statement that the application was filed under the old Rent Act, it is well settled that there is no estoppel against law. If the law permit the land-lord to initiate the proceedings for eviction of the tenant on the ground of default in payment of rent and/or on the ground of bonafide need of the premises for personal occupation under the new Rent Act on or after 31st March,2000 and the proceedings were in fact initiated in January,2001, obviously it could have been only under the new Rent Act.

12. Once the applicant disclosed necessary facts to reveal cause of action in terms of

provisions of new Rent Act irrespective of the fact that there was also reference to the old Rent Act, it would not divest the Small Causes Court from entertaining the application filed by the applicant against the opponent party. The Trial Court, therefore, was justified in considering the application to be under the New Rent Act and deciding it accordingly. The contention against the same sought to be raised on behalf of the petitioner, therefore, is devoid of substance.

13. As regards the second ground of challenge, it is pertinent to note that the decree of eviction is based on two grounds. One on account of the default in payment of rent and the second on account of bona fide need of the premises. As regards the default in payment of rent, both the courts have arrived at concurrent finding regarding failure on the part of the petitioner to discharge the burden regarding payment of the arrears of rent being established by the petitioner and further failure on the part of the petitioner to deposit the rent in terms of order passed by the Trial Court in relation to the interim standard rent. Obviously,

therefore, the petitioner has not been able to challenge the said finding in this petition. No sufficient ground is disclosed to interfere in the concurrent finding arrived at by the Courts below on the issue of default in payment of rent which has been answered in favour of the respondent. Once a tenant is unable to assail the decree of eviction on one of the grounds on which the same is passed merely because on some other ground the findings arrived at by the lower Court are not sustainable, that would not be a justification for interference in the impugned order in writ jurisdiction under Article 227 of the Constitution. Once the eviction order can be sustained on one of the grounds, failure on the part of the landlord to establish the case, on other grounds would not make any difference as far as the decree for eviction is concerned. Viewed from this angle, in fact contentions which are sought to be raised in relation to the ground of eviction on the basis of bona fide need of the premises need not be considered at all. Nevertheless even in relation to the said challenge the same is to be held devoid of substance.

14. The said challenge is on the ground that additional evidence which was permitted to be recorded pursuant to the leave granted in that regard at the belated stage was not considered by the lower appellate Court. To the specific query as to what was the additional evidence that was led by the petitioner consequent to the permission in that regard being granted, attention was sought to be drawn to the affidavit filed by Sunil Balasaheb Bahirat, the son of the petitioner, and in particular the statement made in para no. 4 of the said affidavit the statement relates to possibility of the availing various other places for the personal use of the land-lord as one of the sons of the land lord is in the business of construction of buildings. The petitioner, however, is unable to point out what was the cross-examination in relation to the said affidavit. Inspite of repeated query in that regard the petitioner has not been able to produce for my perusal the cross-examination in relation to the said affidavit. It is pertinent to note that the additional affidavit is filed by none other than the son of the petitioner who is a practising Advocate. In order to analyse the testimony

of a witness, it is not sufficient to peruse the examination-in-chief of the deponent but it is also necessary to peruse the cross-examination of such a deponent. It is pertinent to note that statement in examination-in-chief in para no.4 of the deponent on behalf of the petitioner merely stated that it was possible for the land-lord to get the premises at different places which are being developed by the respondent's son. The possibility of getting premises at different places from the areas which are being developed by the son of the land-lord is different from availability of the premises for the personal use claimed by the respondent. Besides in the absence of perusal of the cross-examination on this aspect, no court can arrive at any finding merely on the basis of the testimony in examination-in-chief of a deponent. It is not understood why the petitioner has suppressed the cross-examination of the said deponent from this Court while contending that the lower appellate Court erred in failing to take note of the said testimony. In fact, perusal of the impugned judgment discloses consideration of all the relevant materials which were

placed before the Court. Merely because the statement regarding remote possibility of availability of premises at different places to the land-lord has not been considered while dealing with the issue regarding the need of the suit premises for personal occupation of the land-lord, that by itself cannot be a justification for interference in the impugned order and much less when the decree of eviction is clearly sustainable on the ground of default in payment of rent.

15. As regards the challenge to the order of fixation of the standard rent, as already stated above, the question of applying old Rent Act could not arise as it was already repealed on 31st March, 2000 much prior to the initiating of the present proceeding and, therefore, no fault can be found with the lower appellate court's order referring to the provisions of new Rent Act while dealing with the matter regarding fixation of the Standard Rent. For the reasons stated above, therefore, the petitions do not survive and are liable to be dismissed and accordingly are hereby dismissed with no order as to costs.

16. At the request of the learned Advocate for the petitioner, the execution of the eviction order, however, shall remain suspended till 31st March, 2007 subject to the petitioner and all the major members of the family of the petitioner filing undertaking in this Court within a period of four weeks to the effect that they shall not induct any third party in the suit premises nor will create any third party interest therein and will deliver vacant peaceful possession of the premises to the respondent on or before 31st March, 2007.

[R.M.S.KHANDEPARKAR,J]